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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

21 December, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte re: CC Docket No. 96-98

Dear Ms. Salas:

Enclosed please find an original and one copy of a redacted version of an *ex parte* letter that WorldCom, Inc. ("WorldCom") submits for the record in CC Docket No. 96-98. Simultaneously, WorldCom submits for the record a confidential version of this letter. The letter responds to arguments made by parties in the transcribed "Verizon & SBC v. Ascent & Pace, Local Circuit Switch UNE Carve-Out Debate" that was held on November 17, 2000 under the auspices of the Commission's Common Carrier Bureau staff and by two confidential BellSouth *ex parte* submissions dated 11/17/00 and 11/30/00. The portion of the *ex parte* letter that refers to confidential data from the BellSouth submissions has been redacted.

Sincerely,

Chuck Goldfarb

Chuck Goldfarb
Director, Law and Public Policy

Enclosures

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Ex Parte re: CC Docket No. 96-98

Dear Ms. Salas:

In recent weeks, the record in this proceeding relating to the switching carve out has been expanded by the transcribed "Verizon & SBC v. Ascent & Pace, Local Circuit Switch UNE Carve-Out Debate" ("Debate Transcript") that was held on November 17, 2000 under the auspices of the Commission's Common Carrier Bureau,¹ and by two confidential BellSouth *ex parte* submissions, dated 11/17/00 and 11/30/00. WorldCom takes this opportunity to refute three specific arguments presented in these newly submitted materials and to present the proper choice of parameters for the switching carve out.

The three specific arguments are:

- *The claim by Allegiance that the fact that it uses its own switches to offer analog service to some small business customers, including some with fewer than 11 or even fewer than 4 lines, demonstrates that CLECs would not be impaired in their ability to offer analog service to small business customers without access to unbundled ILEC switching.*²
- *The claim by BellSouth, based on confidential data, that it has lost a sizeable number and*

¹ In addition to the named parties, other participants in the debate were Allegiance Telecom, Inc., BellSouth, Birch Telecom, and Common Carrier Bureau staff.

² Allegiance is the only CLEC for which there are data in the record showing that it serves the subset of small business customers with ten or fewer analog lines using its own switching. XO has stated that it serves small business customers using its own switching, but has not indicated how many, if any, of those customers have ten or fewer analog lines. The Commission has not attempted to define "small business" in this proceeding, and therefore parties have defined small business in various ways, or have used the term without definition. For example, BellSouth has defined small business customers as those [REDACTED].

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share of small business lines -- including the lines of customers with fewer than 21 and fewer than 4 lines -- to competitors who use their own switching, and that CLECs therefore would not be impaired in their ability to offer analog service to small business customers if denied access to unbundled ILEC switching.

- *The reluctant conclusion by the Pace Coalition that the combination of Commission decisions restricting CLEC access to EELs and ILEC resistance to providing EELs so limit the practical availability of EELs³ that it is fruitless to maintain as a requirement for the switching exception that ILECs provide access to EELs.*

None of these arguments bear up to scrutiny.

Allegiance's claim is not sufficient for the Commission to reconsider its detailed analysis of and conclusions regarding the coordinated loop cutover (also known as "hotcut") issue in the UNE Remand Order.⁴ A single CLEC, Allegiance, argues that the hotcut problem is not of sufficient consequence to keep it from serving analog small business customers. Yet, this very problem was cited by Allegiance's chairman and chief executive and an Allegiance customer in an article entitled "Local Phone Frustration," in the business section of the December 16, 2000 Washington Post, which detailed the specific experience of that customer that resulted in the customer returning to Verizon as its local carrier:

When new connections don't work, the newcomers "are going to be blamed regardless of where the problem is, and rightly so," ... says Royce Holland, Allegiance Telecom's chairman and chief executive. Trying to troubleshoot for customers "is a daily problem for us," he said.

Holland, the Allegiance executive, said about 5 percent of service orders placed with start-up companies like his get lost in the paper shuffle between the old and new carriers....

³ Joseph Gillan, representing the Pace Coalition, stated in the debate: "... realistically, the EEL that people were talking about in the environment leading up to this restriction was an unrestricted EEL that could be used for anything, and as a result of things that happened since then, the EEL really is nothing more than a special access circuit that a carrier can order and then roll if it meets the test. And that obligation exists outside the MSA, inside the MSA, with or without switching. There's no real reason to -- there is no tie any longer between what you're allowed to buy and whether they took switching on or off the table." (Debate Transcript at 10)

⁴ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, released November 5, 1999, at paragraphs 265-275.

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Most of those that fall through the cracks now, Holland said, are small companies like Dale Music that don't need more than several phone and modem lines and are "largely ignored by the market."

Not surprisingly, to a great extent Allegiance is *not* serving these small business customers for whom line provisioning problems are so acute.

Allegiance *selectively* serves small business customers in those MSAs in which it has a switch; it does not offer service to all small business analog customers in those MSAs.⁵ According to Mr. Crowne, of Allegiance, "We're typically in the more dense markets, and we're in the most dense parts of those markets." (Debate Transcript at 16.) Apparently, Allegiance serves that subset of small business analog customers with fewer than 11 lines that happen to be located in the geographic areas served by the ILEC wire centers at which Allegiance has collocated.⁶

It is not viable for Allegiance or any other CLEC to collocate at all ILEC wire centers within an MSA, and thus it is not viable for Allegiance or any other CLEC to use its own switch to serve analog customers who are served by an ILEC wire center at which the CLEC is not collocated.⁷ Thus, in the absence of unbundled switching (as part of UNE-platform), CLECs

⁵ According to the Allegiance Form 10-Q for the quarterly period ended June 30, 2000, Allegiance's "business plan is focused on offering services in 36 of the largest metropolitan areas in the United States. As of June 30, 2000, the Company is operational in 24 markets," all of which are among the 50 largest MSAs. Its "smart build approach" allows it to "address attractive service areas selectively throughout target markets...."

⁶ Although Allegiance has not explicitly described its market strategy in this record, its comments strongly suggest that it offers analog service only in those wire centers where it is collocated. Mr. Crowne of Allegiance states that "We're typically in the more dense markets, and we're in the more dense parts of those markets.... [I]n some of the wire centers that we're in, we are experiencing less density than just the Zone 1, and we are experiencing a sufficient number of lines to make it a viable business.... [O]ur economies on unbundled loops are basically per -- our fixed elements are per wire center." (Debate Transcript at 16-17) This suggests that the primary fixed cost is the cost of collocation at selected wire centers. Further, Mr. Crowne states "We haven't any experience with EEL provision," (Debate Transcript at 19), which would be consistent with a business plan of serving only those customers served by wire centers at which Allegiance is collocated (though it also is true that the lack of experience with EEL provisioning may be partially a function of ILEC intransigence in providing EELs).

⁷ Nor does the fact that Allegiance currently is able to selectively serve analog small business customers demonstrate that it will continue to be viable to do so over time. According

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would be impaired in their ability to offer service to a large portion of small business customers in an MSA.

This is confirmed by RBOC statements in the debate. Mr. Phillips of SBC describes the only potentially viable facilities-based CLEC strategy, which inherently results in serving small business customers selectively, not ubiquitously: "So, you're going to go to wire centers that serve predominantly business customers, more business customers, and you'll be able to justify the cost of your own facilities, co-location, et cetera, in those wire centers much more readily than you would if the wire center was serving predominantly residential customers." (Debate Transcript at 59) Similarly, Mr. Trinchese of Verizon frames the impairment discussion in terms of the wire centers at which a CLEC is collocated: "are you impaired to be able to take a one, two or three business lines customer if you have a switch and you have a collocation? And can you switch them over to your switch?" (Debate Transcript at 81) Thus, the RBOCs at least implicitly concede that, in the absence of unbundled switching, CLECs may not be impaired only in those circumstances (i.e., in those wire centers) where it is economically feasible to collocate -- which by all accounts is not ubiquitously feasible.⁸

to its Form 10-Q for the quarterly period ended June 30, 2000 (at p. 14), \$35.6 million -- or 42.7 percent -- of Allegiance's \$83.4 million in revenues for the six months ended June 30, 2000 were from access charges imposed on IXC's and reciprocal compensation from ILECs, two revenue sources that are likely to be reduced substantially in the near future by regulatory and/or market actions. These changes will make it less profitable for CLECs to serve customers and can only expand the scope of small business customers that CLECs will not be able to serve using their own switches.

⁸ In their Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services as Specified in Section 69.727 of the Commission's Rules filed earlier this year, BellSouth, SBC, and Verizon provided data on the number of CLEC collocations with transport facilities at each of their wire centers. Even in the 50 largest MSAs, there were no collocations with transport facilities in the vast majority of wire centers, as shown below:

MSA	Total number of wire centers	Number of wire centers with 1 or more collos and transport facilities:
New York	239	68
Philadelphia	110	46
Boston	142	17
Washington, DC	95	25
Pittsburgh	46	18
Baltimore	47	21
Buffalo/Niagara Falls	40	5

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The confidential data submitted by BellSouth in its 11/17/00 and 11/30/00 *ex parte* submissions do not refute this conclusion. WorldCom has reviewed those data and find the methodology used to collect the data fatally flawed and the conclusion that BellSouth reaches from those data faulty. There are no reliable data on the record demonstrating that competitive providers serve more than a minuscule share of analog small business customers using their own switches.

BellSouth alleges that its data show that a large number, and a large proportion, of small business lines in the BellSouth territory are now served by CLECs using their own switches. The data provided are from Bell South's Small Business Services group, which covers customers [REDACTED].⁹ The data are for the twenty wire centers in each BellSouth state that have had the largest cumulated number of lines disconnected since January 1996 for "competitive reasons" -- allegedly because the customer has chosen a competitive alternative. BellSouth states that its service order personnel maintain information on the reason why lines are disconnected and that it

Providence	22	5
Norfolk/Virginia Beach	18	15
Atlanta	58	16
Miami/Fort Lauderdale	51	38
New Orleans	28	6
Nashville	41	16
Charlotte	22	12
Greensboro	18	7
Raleigh/Durham	15	8
Dallas	86	18
Houston	70	21
St. Louis	49	7
Kansas City	33	7
San Antonio	31	8
San Francisco/Oakland	74	12
San Diego	51	13
Los Angeles/Long Beach	109	24
Sacramento	35	8
San Jose	19	10
Chicago	139	11
Cleveland	40	8
Columbus	30	9
Indianapolis	33	5
Milwaukee	34	10

⁹ [REDACTED].

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included in the filed data the lines that were recorded as disconnected for one of three reasons: (1) the customer moved to a facilities-based CLEC (including a CLEC providing service using UNE-platform); (2) the customer moved to a reseller; or (3) a “general competitive disconnect,” with no specific customer alternative identified.¹⁰

For the 20 wire centers in each state with the largest amount of “cumulative [competitive] disconnect,” BellSouth takes these cumulated competitive disconnects, from January 1996 through the present, and adds to them the total number of retail small business lines that BellSouth currently serves, to get its estimate of the total number of small business lines in the wire center.¹¹ It then calculates “market share” by dividing the BellSouth retail line count by the sum of the retail line count and the cumulative competitive disconnect line count. BellSouth disaggregates these figures by the line size of customer – but (without explanation) this disaggregation differs for the 11/17/00 data (1-2 lines, 3-10 lines, 11-20 lines, 21-50 lines, 51+ lines, and unassigned) and the 11/30/00 data (1-3 lines, 4-20 lines, 21-50 lines, greater than 50 lines, and unassigned). The data in the 11/17/00 submission cover the period through August 2000; the data in the 11/30/00 submission update the data through September 2000, but since BellSouth has changed the basis for disaggregation direct comparisons are not possible, except for the gross totals.

BellSouth alleges that the data demonstrate that for small business customers, including those with fewer than 21 lines or even fewer than four lines, a sizeable portion of lines are served by CLECs that use their own switches. WorldCom challenges the data and the BellSouth conclusion for many reasons:¹²

- BellSouth itself admitted in its 12/06/00 telephone conversation with WorldCom that basing market share on cumulative competitive disconnects overstates the competitive market share because some of the customers whose lines had been disconnected for

¹⁰ BellSouth claims this last category is small, but provides no data on it. Nor does it break out the resale disconnects from the facilities-based disconnects, nor (within the facilities-based disconnects) the UNE-platform disconnects from the UNE-loop disconnects.

¹¹ BellSouth identifies the 20 wire centers, and provides wire center-specific data, for Georgia and Tennessee (the states with the largest number of disconnects). For the other states it only provides aggregate data covering all 20 wire centers.

¹² It is WorldCom’s understanding that BellSouth intends to submit into the record later this week a document detailing the methodology it used to collect these data. If that submission provides information that is different from the description that BellSouth provided to WorldCom in a telephone conversation of 12/6/00, WorldCom might have the need to comment further on these confidential data.

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competitive reasons since January 1996 have returned to BellSouth as customers or have gone out of business and therefore are no longer customers at all. These two categories, which should be deducted from the cumulative disconnect numbers, are likely to be quite large. Given the incredible provisioning problems CLECs have faced when using BellSouth loops (as part of platform or alone), many customers that initially disconnected from BellSouth have returned to BellSouth. Moreover, the very small business customers of concern here -- those with fewer than 21 or fewer than four lines -- are the category of businesses with the highest failure rate, the highest likelihood of changing their business address, and the highest likelihood of merging with or being acquired by a larger company that requires it to move or change its local carrier, and therefore the ones for which gross cumulative totals are most likely to overstate actual numbers. BellSouth could have attempted to correct for these but chose not to. It could have reviewed number portability data available to it to identify numbers ported back to BellSouth either because the customer came back to BellSouth or because the line (and number) were no longer in use and therefore automatically ported back to BellSouth. Alternatively, it could have reviewed data on its own customers to determine the percentage of its cumulated small business lines since January 1996 that were disconnected because the customer went out of business, and reduce the cumulative competitive disconnect numbers by the same percentage.

- The BellSouth market share data shed no light on the number or portion of small business lines served by competitors who use their own switches because: (1) they include, but do not break out, resale-based cumulative disconnects, which do not reflect competitors using their own switching; (2) they include among facilities-based cumulative disconnects, but do not break out, those disconnects attributable to a CLEC using UNE-platform (and thus not using its own switch); and (3) there is no explanation of "general competitive disconnect," and thus no way to determine whether such disconnects are attributable to competitors serving customers with their own switches.¹³
- BellSouth does not provide any explanation for how the disconnected lines were assigned by its service order personnel to any of the three categories that comprised "competitive disconnects," nor does it demonstrate that such categorization was performed

¹³ In separate tables in its 11/30/00 submission, BellSouth provides confidential data on the number of lines its Small Business Services organization is provisioning for "total business resale" and for "UNE-platform," but these data come from entirely different databases than the BellSouth data on cumulative competitive disconnects, and therefore subtracting the former from the latter to attempt to identify disconnects attributable to competition from CLECs using their own switches would represent an inappropriate apples to oranges comparison. While the arithmetic calculation could be performed, the result would be meaningless.

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accurately.¹⁴ To accept these data is to accept a pig in a poke.

- The BellSouth data are only for the 20 wire centers in each state that BellSouth has identified as the ones with the greatest number of competitive disconnects. These are not representative of competitive activity within any MSA, no less competitive activity within a state. BellSouth has hundreds of wire centers in each state. According to its filing in the Pricing Flexibility proceeding, it has 58 wire centers in Atlanta alone.¹⁵ The limited data provided, even if they were not subject to all the fundamental flaws described above, do not provide useful information on which to make an impairment determination. [REDACTED.] These data are insufficient for determining whether CLECs are able to serve small business customers throughout the Atlanta MSA.

WorldCom respectfully disagrees with the Pace Coalition's defeatist attitude that the current restricted access to EELs will remain so pervasive that including a requirement for such access will be meaningless. The Commission's initial determination that CLECs would be impaired in their ability to offer service using their own switching without access to EELs remains correct. Rather than abandoning the EELs requirement, the Commission should maintain it and use it to provide an incentive for ILECs to offer EELs. If the EELs requirement were eliminated, other exception parameters would have to be modified.

The Commission, in its UNE remand order, determined that access to EELs would allow CLECs to offer local services where they otherwise would be impaired¹⁶ and therefore included the requirement that the ILEC offer EELs as part of the switching carve out. However, with very rare exceptions (primarily in Florida and Georgia, where the state commissions have ordered BellSouth to allow CLECs to convert special access circuits used for local service to EELs), the ILECs have refused to make EELs available to CLECs for the provision of local service. CLECs have been forced to continue to purchase loop-transport combinations out of ILEC special access tariffs, at rates that far exceed TELRIC.

¹⁴ In a separate table in its 11/30/00 submission, BellSouth provides data on "UNE-Platforms as a Percent of Estimated Line Loss." BellSouth used a separate database to calculate the number of UNE-platform lines from the database used to estimate the cumulative competitive disconnects. If BellSouth has a database capable of directly identifying the lines used by CLECs as part of UNE-platform, it seems strange that it does not have an analogous database capable of directly identifying the number of UNE-loops purchased by CLECs to provide service with their own switches.

¹⁵ Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, dated August 24, 2000, at Attachment 3, pp. 15-16.

¹⁶ Access to EELs reduces CLECs' collocation-related costs and lowers transport costs.

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In the absence of access to EELs, CLECs have widely purchased special access to provide local service, but those purchases have occurred only at the DS-1 level or higher, rarely if ever at the DS-0 level. Apparently, the revenues that can be generated serving customers below the DS-1 level are not sufficient to support the costs associated with DS-0 special access rates.

In the 50 largest MSAs, even without access to EELs, CLECs appear to be able to offer local service widely -- though not ubiquitously -- using their own switches and special access services to serve customers at the DS-1 level or greater. In particular, CLECs are not always able to serve DS-1 customers who are located in the outer areas of those MSAs due to high mileage charges in the DS-1 transport rates that render CLECs noncompetitive. It is likely that with access to EELs, the lower mileage charges would allow the CLECs to serve customers with DS-1 or greater service throughout the top 50 MSAs.

At the same time, in these 50 largest MSAs, Allegiance, and perhaps other CLECs, have *selectively* offered service using their own switches to some customers at less than a DS-1 level,¹⁷ but the CLEC appears to offer service only to those customers served by ILEC end offices at which the CLEC is collocated. These CLECs are not able to provide such service ubiquitously to all customers in the top 50 MSAs, no less in smaller MSAs. Those small business customers seeking less than DS-1 service who are not in geographic areas served by the ILEC end offices at which the CLECs are collocated do not have alternate service providers to the ILECs, except to the extent there are carriers offering service using UNE-platform or resale.

The alternatives for small business customers are even more limited beyond the top 50 MSAs, where even companies like Allegiance have not ventured. There is no evidence in the record that shows that CLECs can ubiquitously serve small business customers, including customers for DS-1 and greater service, using their own switches, beyond the top 50 MSAs.

Conclusion

The fact that Allegiance has been able to *selectively* offer analog service to some small business customers is insufficient evidence to reconsider the Commission's conclusion that CLECs are impaired due to hot cut problems. The record evidence shows that, even in the 50 largest MSAs, a CLEC using its own switching is impaired in its ability to serve analog small business customers who are not served by ILEC wire centers where the CLEC is collocated. And it is not feasible for CLECs to collocate at more than a small portion of ILEC wire centers, even in the largest MSAs. Access to EELS reduces the scope of impairment by reducing the need to

¹⁷ Interestingly, the only CLEC for which there is evidence in this record that it uses its own switches to offers service at less than the DS-1 level is Allegiance. In the Debate Transcript, various RBOCs refer to Allegiance and unnamed other CLECs that offer such service, but fail to identify any other providers.

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collocate at all wire centers and expanding the geographic radius around the CLEC switch that can be served, but there is no evidence that access to EELs would resolve the impairment problem when serving analog small business customers. In smaller MSAs, these difficulties are even more pronounced.

The Commission's first attempt to define the unbundled switching exception carve out was not too far off the mark, but additional evidence now in the record supports a modified carve out that better reflects where CLECs would and would not be impaired without access to unbundled switching. On one hand, the geographic boundary of the Commission's original carve out was set too narrowly by limiting the exception to the special access Zones 1 in the 50 largest MSAs. On the other hand, that was offset by the choice of customer boundary, which was set too broadly to cover customers with line counts as low as four, when the proper cutoff is the DS-1 level. The Commission therefore should modify the carve out by simultaneously expanding the geographic boundary to cover the full expanse of the 50 largest MSAs *and* increasing the customer size to the DS-1 level, so that analog customers not served by ILEC serving wire centers at which competitive providers are collocated still could have access to an alternative service provider. If the Commission were also to eliminate the EELs requirement, then it should consider narrowing the geographic boundary to some place smaller than the full MSA. Since no party has been able to define a clear boundary smaller than the full MSA, however, the better approach is to maintain the EELs requirement.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Goldfarb".

Chuck Goldfarb
Director, Law and Public Policy